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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its tenth session

Chairperson-Rapporteur: Ms. Elizabeth Odio Benito (Costa Rica)

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Introduction

1. The Commission on Human Rights, in its resolution 2001/44, took note of the report of the ninth session of the open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) (E/CN.4/2001/67), and requested the working group, in order to continue its work, to meet prior to the fifty-eighth session of the Commission for a period of two weeks, with a view to completing expeditiously a final and substantive text, and to report to the Commission at its fifty-eighth session. The Economic and Social Council, in its decision 2001/265, endorsed that request.

I. ORGANIZATION OF THE SESSION

A. Opening of the session and election of officers

2. The working group held its tenth session from 14 to 25 January 2002. A representative of the United Nations High Commissioner for Human Rights opened the session and made an introductory statement in which he recalled that, in accordance with Commission resolution 2001/44, the Secretary-General had transmitted the report of the ninth session of the working group to all Governments, specialized agencies, chairpersons of the human rights treaty bodies and intergovernmental and non-governmental organizations, and invited them to submit their comments to the working group. By 15 December 2001, substantive replies had been received from the Governments of Belgium, on behalf of the European Union, Georgia and Japan, as well as from several non-governmental organizations. Document E/CN.4/2002/WG.11/WP.1 contained a summary of those replies and was made available to the working group. Replies had been received as well from the Governments of Azerbaijan and Colombia after 15 December 2001, copies of which were also made available to the working group.

3. At its 1st meeting, on 14 January 2002, the working group re-elected Ms. Elizabeth Odio Benito (Costa Rica) as Chairperson-Rapporteur.

B. Attendance

4. Representatives of the following States members of the Commission on Human Rights attended the meetings of the working group, which were open to all members of the Commission: Algeria, Argentina, Austria, Bahrain, Belgium, Brazil, Canada, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Peru, Poland, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, South Africa, Spain, Sweden, Syrian Arab Republic, Thailand, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela and Viet Nam.

5. The following States non-members of the Commission on Human Rights were represented by observers at the meetings of the working group: Azerbaijan, Bosnia and Herzegovina, Bulgaria, Brunei Darussalam, Colombia, Cyprus, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, Georgia, Greece, Hungary,

Iran (Islamic Republic of), Ireland, Israel, Jordan, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Monaco, Morocco, Nepal, Netherlands, New Zealand, Norway, Paraguay, Philippines, Romania, Slovakia, Slovenia, Tunisia, Turkey, United States of America and Yugoslavia.

6. The Holy See and Switzerland were also represented by observers.

7. The Council of the European Union, the International Committee of the Red Cross, the League of Arab States and the following non-governmental organizations were represented by observers at the meetings of the working group: Amnesty International, Association for the Prevention of Torture, Human Rights Watch, International Commission of Jurists, International Federation of ACAT (Action by Christians for the Abolition of Torture), International Rehabilitation Council for Torture Victims, International Service for Human Rights and the World Organization against Torture.

8. On 22 January 2002, the United Nations High Commissioner for Human Rights as well as Mr. Theodor C. van Boven, Special Rapporteur on the question of torture, addressed the working group. Mr. Andreas Mavrommatis, member of the Committee against Torture, also addressed the working group on 24 January 2002.

C. Documentation

9. The working group had before it the following documents:

E/CN.4/2002/WG.11/1	Provisional agenda
E/CN.4/2002/WG.11/WP.1	Working paper submitted by the secretariat
E/CN.4/2002/WG.11/CRP.1	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: proposal by the Chairperson
E/CN.4/2001/67	Report of the working group on its ninth session
E/CN.4/2000/58	Report of the working group on its eighth session
E/CN.4/1999/59 and Add.1	Report of the working group on its seventh session
E/CN.4/1998/42 and Corr.1	Report of the working group on its sixth session
E/CN.4/1997/33	Report of the working group on its fifth session
E/CN.4/1996/28 and Corr.1	Report of the working group on its fourth session

E/CN.4/1991/66 — Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights

D. Organization of work

10. At the 1st meeting, on 14 January 2002, the Chairperson-Rapporteur expressed the hope that the working group would reach agreement on a final text of the optional protocol for adoption by the Commission on Human Rights at its fifty-eighth session. She regretted that, for reasons linked to the events of 11 September 2001 as well as her professional commitments, she had been unable to hold pre-sessional informal consultations. She reminded participants, however, that in July 2001 she had sent to all Member States a summary of the different proposals that were on the table at that time, i.e. the original Costa Rican draft and the drafts presented by, respectively, Mexico with the support of GRULAC and the European Union, and solicited their views on them. In her view, the drafts should be considered sufficient to pursue the work and agree on a final text. She had also sent to all Member States, in December 2001, a working paper proposing a plan of work for the tenth session and summarizing the issues that needed to be further discussed.

11. Following informal consultations with the various regional groups (Africa, Asia, Eastern Europe, Latin America and the Caribbean (GRULAC), and Western Europe and other States) held on 11 January 2002, the Chairperson distributed at the 2nd meeting a work plan for the first week. The Chairperson advised the working group that she would present her proposal for an optional protocol by the end of the first week. She indicated that she intended to propose a system for the prevention of torture based on two pillars, i.e. an international mechanism combined with national mechanisms, based on the original Costa Rican proposal and the proposals presented by the GRULAC and the European Union, as she had been mandated to do. Delegations were therefore encouraged to make their comments in the course of a general debate that would be held during the first three days of the session. At the same time, the Chairperson would hold informal bilateral consultations with interested delegations. The Chairperson further indicated that she did not intend to impose her own ideas but rather to conciliate the different positions in order to comply with the mandate of the Commission, which was the establishment of a preventive system of regular visits to places of detention. In her view, sufficient ideas and proposals had been put on the table over the past 10 years.

12. At the 6th meeting, on 17 January 2002, the Chairperson presented her proposal for an optional protocol and invited delegations to submit their comments thereto. Those comments were made at the 7th and 8th meetings on 22 January 2002.

II. GENERAL DEBATE

A. The two-pillar system

13. At the 1st and 2nd meetings, on 14 January 2002, a debate was held on the concept of the two-pillar system, which would involve combining an international visiting mechanism with national ones and constituted the thrust of both the GRULAC and European Union (EU) drafts

presented during the ninth session of the working group.[2] The need to develop mechanisms that would assist States to comply with their obligation to prevent torture, in accordance with articles 2 and 16 of the Convention against Torture, was very much emphasized.

14. The representative of Spain, on behalf of the European Union (EU), the Central and Eastern European States, including Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia, in association with Cyprus, Malta and Turkey, presented a common position. While recalling that the main purpose of the working group was to create a strong, well-functioning international visiting mechanism for the prevention of torture, these delegations welcomed the initiative to establish a two-pillar system. Some of the above-mentioned delegations also made individual interventions in favour of such a system and emphasized the need for a strong international mechanism which would not only provide technical assistance to the national mechanisms but also have very extensive visiting functions in connection with any place where people were deprived of liberty.

15. Similar views were expressed by the delegations of Argentina, Canada, Ecuador, Georgia, Guatemala, Mexico, Norway, New Zealand, the Republic of Korea, the Russian Federation, South Africa and Switzerland. The delegation of Mexico stated that it would not insist on its proposal, presented at the ninth session of the working group, and supported the creation of a strong international visiting mechanism for the prevention of torture. The delegation of South Africa expressed concern that national mechanisms might shift the focus away from the efforts envisaged to achieve strong international standards of prevention against torture.

16. The delegations of China, Cuba, Egypt and the Syrian Arab Republic also spoke in favour of the two-pillar system and put particular emphasis on establishing strong national mechanisms with visiting functions and an international mechanism which would mainly provide technical assistance.

17. The delegation of the United States of America supported a three-pillar system. The delegation was of the view that at the national level, States should be encouraged to create national visiting mechanisms to prevent torture. The delegation did not, however, support provisions in an optional protocol that would eliminate the flexibility provided to States under articles 2 and 16 of the Convention concerning the measures that might be taken to prevent torture. At the regional level, the delegation believed that States should be encouraged to consider adopting mechanisms that would provide for mandatory visits to places of detention like those contained in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocol I.[3] At the international level, the delegation supported measures that would strengthen the existing Committee against Torture by ensuring that any new subcommittee reported directly to the Committee and assisted the Committee in its work, including voluntary visits to places of detention, and by providing technical assistance to States. The delegation did not support the creation of a new committee that would operate independently of the existing Committee against Torture.

18. The Association for the Prevention of Torture presented a joint statement on behalf of the following NGOs: Amnesty International, Human Rights Watch, International Commission of Jurists, International Federation of ACAT, International Rehabilitation Council for Torture

Victims (IRCT) and World Organization against Torture (OMCT), with the support of the Redress Trust for Torture Survivors. The NGOs stressed that the focus of the optional protocol should be on the prevention of torture and the implementation of international standards at the national level. While supporting the proposal for a two-pillar system, the NGOs reiterated that a strong international visiting mechanism, linked to the Committee against Torture, should lie at the heart of the optional protocol. With respect to the issue of duplication, the NGOs stated that the international mechanism would not be duplicating the work of existing mechanisms and would not be concerned with issues already being considered elsewhere in the United Nations system. The new mechanism would instead bring added value to existing mechanisms on torture.

B. The international mechanism and its relationship with the Committee against Torture and the national mechanisms

19. At its 3rd and 5th meetings, the debate in the working group focused mainly on the international mechanism and its relationship with the Committee against Torture and the national mechanisms. The compulsory nature of both kinds of mechanism was also discussed.

20. The delegation of Spain, on behalf of the European Union, reiterated the common position expressed at the 1st meeting regarding their strong preference for an international visiting mechanism for the prevention of torture which would not only provide technical assistance to the national mechanisms but also have very extensive visiting functions in connection with any place where people were deprived of liberty. The delegations of Argentina, the Czech Republic, Guatemala, Mexico, Canada, Sweden, Slovenia, New Zealand, Denmark, El Salvador, the Netherlands, Georgia, Germany, the United Kingdom, Norway, Latvia, France, Ecuador, Portugal, the Republic of Korea, Switzerland, Poland, Austria and South Africa also made interventions during the debate in favour of this approach. The delegations of Denmark and Finland suggested that the visiting powers should be exercised on the basis of an open invitation in order to make the mechanism as efficient as possible. The delegation of Italy proposed that the protocol could include transitory provisions allowing States Parties to take the necessary measures before starting to receive the visits of the international mechanism.

21. For the delegations of China, Cuba, Egypt and the Syria Arab Republic, the main function of the international mechanism should be to provide technical and financial support to the national mechanisms. The visiting functions should mainly be entrusted to the national mechanisms. In this regard, the delegation of Cuba stressed the importance of having an international instrument that would create an obligation on States Parties to set up national mechanisms and the need for that instrument to be flexible. The delegation of Japan questioned the appropriateness of an international body with unlimited powers to inspect places of detention in the territory of States Parties.

22. The delegation of Egypt suggested that the functions of the international mechanism should be the following: to support the Committee against Torture in all its functions under the Convention; to assist States to set up national mechanisms; to provide advice and technical assistance to the national mechanisms, especially with regard to the implementation of the recommendations of the Committee; to administer the voluntary fund proposed in the

Costa Rican, GRULAC and EU drafts to help finance the implementation of such recommendations; and to visit places of detention if requested to do so by the State concerned. Moreover, the delegation of Egypt strongly opposed the idea of an international mechanism with unlimited authority to visit any detention facility within a State at any time, and indicated that such unlimited authority would encounter constitutional obstacles. The delegation of China suggested that the international mechanism could participate in the visits to places of detention carried out by the national mechanisms but should not have the leading role.

23. The delegations of Cuba and Egypt also suggested that States should have the possibility of refusing access to places of detention for reasons linked to national security. They also emphasized the need for the international mechanism to respect the confidentiality of the procedure.

24. The delegations of the Russian Federation and the Syrian Arab Republic said that the international mechanism should comply with the principles of independence and impartiality.

25. The delegation of the United States reiterated that should an international mechanism be established by the optional protocol, its main focus should be to reinforce the Committee against Torture. This new international mechanism should function as a subcommittee of the Committee against Torture and assist it, particularly with respect to its inquiry procedure under article 20 of the Convention. The delegation viewed its proposal as inherently preventive in nature, in part because it would allow for the possibility of voluntary visits to places of detention.

26. The views expressed by the United States delegation were included in an "alternative draft optional protocol" that the delegation circulated among the participants at the 5th meeting of the working group. It is contained in annex II to the present report.

27. The Chairperson recalled that the mandate of the working group was the establishment of a preventive system of regular visits to places of detention on a universal level and that article 20 had a clear monitoring and sanctioning function, not a preventive one. Regarding the reference to the regional mechanisms made by the United States delegation on several occasions, she pointed out that it was outside the working group's mandate to consider the relevance of a regional mechanism. The Chairperson took note of the constructive efforts of the United States delegation and said that she would keep its proposal in mind when preparing her own draft.

28. The delegation of Guatemala stated that the question of applying the European Convention to States which were not members of the Council of Europe, referred to by some delegations, was outside the mandate of the working group. It also expressed doubts about the efficacy of replacing a proposed universal mechanism by one that would allow States to be invited to participate in a mechanism set up by a regional group to which that State did not belong and in whose political organs it was not represented. Furthermore, the delegation recalled that the scope of article 20 of the Convention was limited to the investigation of situations of the systematic practice of torture and, therefore, was not an appropriate mechanism to deal with prevention.

29. The delegation of the Netherlands indicated that the proposal of the United States raised both procedural and substantive problems. The procedural problem was its late submission. After the ninth session of the working group States had been given the opportunity to react to the three drafts on the table. It was therefore regrettable that the United States had presented its draft only one day before the presentation of the Chair's proposal. This situation did not contribute to the work of the working group. With regard to the substance, the United States proposal did not offer anything new. It was a repetition of ideas that had been presented earlier. The main problem was that it contained no provision for an international visiting mechanism.

30. The importance of avoiding duplication and ensuring added value to the existing system was emphasized by all delegations. In this context, it was generally felt that the work of the Committee against Torture should not be duplicated and that any mechanism established under the optional protocol should function as a subcommittee of the Committee against Torture, with different and additional functions in the field of prevention. The Committee against Torture should continue to serve as the parent body in the fight against torture. The delegation of Spain and others stressed that a distinction must be made between, on the one hand, the monitoring role of the Committee against Torture which, according to article 20 of the Convention, is reactive and requires previous and well-founded indications that "torture is being systematically practised" and, on the other hand, the preventive and advisory roles to be played by a strong subcommittee empowered to visit at any time all places of detention. The delegation of Egypt suggested that the Committee against Torture, as the parent body, would continue functioning as a monitoring body, whereas the subcommittee would act as an advisory body and the national mechanisms as visiting bodies. The delegations of Italy and Ecuador emphasized that the subcommittee and the Committee should coordinate their activities from the legal and technical perspectives.

31. The delegation of Cuba stressed the need to ensure a pro rata geographic and gender balance in the composition of the subcommittee. The need to observe the principle of equitable geographic distribution was also stressed by the delegation of Ecuador.

32. The delegation of the United States suggested that it would not be appropriate to fund the international visiting mechanism from the regular budget of the United Nations, as that would mean that every Member of the United Nations would contribute to the mechanism whether or not they were party to the optional protocol; the costs should be borne by the States Parties. The delegation of Japan agreed. Furthermore, the delegations of the United States and Saudi Arabia expressed concern regarding the financial implications of creating an international mechanism and the budgetary consequences of such a mechanism on other human rights mechanisms. The delegation of the United States reiterated its request, made during the ninth session of the working group, for information concerning the projected costs of the proposed visiting mechanism.

33. The delegations of Sweden, Denmark and Finland were of the view that the international mechanism should be funded under the regular budget and recalled the provision to that effect contained in the draft presented by the European Union in 2001. Such a solution would, in particular, guarantee the independence and neutrality of the mechanism. The delegation of Denmark expressed concern about any attempt to impose cost-benefit thinking on the prevention of torture, since prevention of torture was an obligation under articles 2 and 16 of the

Convention. A protocol with a strong visiting mechanism funded from the regular budget would make an effective tool available to all States Parties in fulfilling their obligation under articles 2 and 16. The delegation of Cuba stated a preference for a regular-budget funding in order to avoid a shortage of resources and the danger of earmarking, but said that it was prepared to be flexible.

34. The delegation of the Netherlands underlined the importance of financing through the regular budget. It questioned the argument that States should only contribute to treaties to which they were a party. The United Nations treaty system was part of the United Nations and as such all Member States contributed (per ratio) to the system, irrespective of the treaties they had signed or ratified. It would also be unfair for States Parties to put a price tag on a human rights treaty. That would mean that only rich States would be in a position to become parties to such treaties. Many people would be denied human rights because their Governments could not afford to become a party.

35. The delegation of the Netherlands pointed at the added value of a protocol for the United Nations system. With regard to cost, it emphasized that the optional protocol had a preventive character and it was better to prevent than to cure. The United Nations Voluntary Fund for Victims of Torture, thanks to a growing number of contributions, had been able to help an ever-growing number of victims. The international community should, however, concentrate its efforts on preventing torture. Prevention through inspections by international and national mechanisms was precisely the purpose of the optional protocol.

36. Regarding the constitutional obstacles referred to by some delegations, the delegation of the Netherlands stated that this should not be a problem because the protocol was optional. A State would decide whether it wished to become a party after careful consideration by its Government and, often, by its parliament. Possible constitutional and legal constraints would be examined in that context. Throughout the extensive procedures of signing and ratifying a treaty, both the international and national legal systems had a whole range of opportunities to verify the relationship between international and national legal systems.

C. The national mechanisms

37. The 4th meeting of the working group focused mainly on the functions of and other issues related to the national mechanisms, although many delegations had already expressed their views on the matter at previous meetings.

38. Many delegations in favour of a strong international mechanism with visiting functions, among them Canada, the Czech Republic, Denmark, Finland, Italy, Mexico, the Republic of Korea, Sweden and Switzerland, reiterated that national mechanisms should be encouraged but should not replace the international one. The delegation of Sweden suggested that national mechanisms should be required to report to the international mechanism. The delegations of Switzerland, Denmark, Germany and Canada stated that the establishment of such mechanisms should not be mandatory, whereas the delegations of Guatemala, Argentina and Mexico were of the opposite view. The delegation of Cuba suggested that States should be given the option to accept the competence of the national mechanism, or the international one, or both.

39. The delegations of China, the United States of America and Egypt proposed that national and regional mechanisms should take the leading role in visiting places of detention. The delegation of Egypt stated that the majority of countries where the use of torture was a problem either did not have national mechanisms or they were inefficient. Therefore, there was a strong need for an international instrument that would assist and encourage States to set up strong mechanisms at the national level on the basis of certain common principles.

40. The delegation of the United States strongly opposed the concept of establishing, either at the national or the international level, mandatory visiting mechanisms that would have unrestricted authority to visit places of detention. The delegation expressed concern about the potential for abuse by any such unrestricted authority and suggested instead a system of limited authority that would provide checks and balances and ensure accountability.

41. Many delegations, including those of Spain (on behalf of the European Union), Argentina, Egypt, Georgia, El Salvador, the Republic of Korea, Poland and South Africa, made statements regarding the ways and means of ensuring the independence of the national mechanisms. It was generally felt that these mechanisms should be established on the basis of the Principles relating to the status and functioning of national institutions for the promotion and protection of human rights (the "Paris Principles"), that they should be independent from any other national authority, able to issue recommendations to the concerned authorities and adequately funded. They should also have, inter alia, unrestricted access to all places where persons were deprived of their liberty as well as full freedom to interview persons held in those places, without witnesses. States should also ensure that no one would be subjected to reprisals for having been in contact with the national mechanism. In support of this proposal, the delegation of Argentina further suggested that NGOs and civil society should have a place in any national mechanisms under the optional protocol. The delegations of Switzerland and Cuba suggested that the universal standards for persons deprived of their liberty should be included in the terms of reference of the national mechanisms.

42. The delegations of China and Cuba opposed the idea of a uniform approach for national mechanisms and suggested that, in establishing such mechanisms, consideration should be given to the cultural and other circumstances of each State. The delegation of Japan also opposed the idea of a unified or mandatory approach with respect to the national mechanisms.

43. The delegation of Sweden indicated that some countries already had national mechanisms for the prevention of torture; the protocol should therefore leave open the possibility of designating existing mechanisms to carry out the functions described in it, on the understanding that such mechanisms should comply with certain requirements.

III. PROPOSAL PRESENTED BY THE CHAIRPERSON-RAPPORTEUR

A. Contents of the proposal

44. At the 6th meeting of the working group, on 17 January 2002, the Chairperson presented her proposal for an optional protocol,[4] the text of which is included in annex I to the present report.

45. In introducing her draft the Chairperson recalled that negotiations on the original draft submitted by Costa Rica had been going on for 10 years. During that time, as well as in the course of the current session, delegations had shown creativity and flexibility and expressed the wish to reach consensus and conclude the negotiations as soon as possible. In drafting her proposal she had been inspired by all the ideas expressed, the initial Costa Rican draft (part of which had been approved at second reading), the drafts submitted at the ninth session of the working group by the GRULAC (which put emphasis on the national mechanisms) and the European Union (which focused mainly on the international mechanism), as well as the new alternative draft put forward by the United States delegation. She had also taken into consideration relevant United Nations instruments. She added that she looked forward to receiving comments on the proposal from all delegations but did not intend to initiate negotiations on its contents, except with regard to article 24 (see below). She further stressed that the draft was certainly not a perfect one but constituted a serious attempt to build bridges and reach the best compromise achievable.

46. Regarding the preamble, the Chairperson emphasized in particular the reference to the obligation to prevent torture contained in articles 2 and 16 of the Convention, as well as in resolution 2001/44 of the Commission on Human Rights which recalled that the World Conference on Human Rights had firmly declared that efforts to eradicate torture should, first and foremost, be concentrated on prevention, and called for the early adoption of an optional protocol to the Convention intended to establish a preventive system of regular visits to places of detention.

47. Part I (General Principles) set out the objective of the protocol, i.e. to establish a system of regular visits by independent international and national mechanisms (art. 1). Article 2 provided for the establishment of a subcommittee of the Committee against Torture. Taking into consideration the concerns expressed regarding the different realities prevailing in States, article 3 contained the obligation to set up, designate or maintain national visiting bodies. Article 4 contained the general principle regarding visits.

48. Part II referred to the composition of the subcommittee and the election of its members and followed very closely the procedures contained in other United Nations human rights instruments.

49. Part III described the mandate of the subcommittee which included three main areas: visits to places of detention, technical assistance, and cooperation for the prevention of torture with relevant United Nations organs as well as international, regional and national institutions. Article 12 set out the obligations of States vis-à-vis the subcommittee. Article 13 established the different types of visits that the subcommittee would undertake. Article 14 listed the obligations of States regarding visits and referred to the situations in which visits could be objected to. The relationship between the subcommittee and the Committee was the subject of article 15.

50. Part IV of the proposal focused on national mechanisms and stated that States would be required to maintain, designate or establish national mechanisms to work in close cooperation with the subcommittee. Those mechanisms should be based on the Paris Principles.

51. The Chairperson referred to the declaration contained in article 24 (Part V) which would give States the possibility of postponing their obligations either under Part III or under Part IV. The purpose of this provision was to facilitate the adoption of measures by States that would enable them to comply with their obligations under the protocol. This article, however, was open to negotiation, since it dealt with an issue that had not been discussed at the working group.

52. Concerning Part VI, the Chairperson drew the attention of the delegations to article 25, according to which the subcommittee would be financed from the regular budget of the United Nations. She was aware that certain delegations, including that of the United States, had very strong feelings about this issue. She recalled, however, that this point had been discussed and negotiated by the working group at its sixth session.[5] Furthermore, she stressed that for many developing countries the financial onus might be too heavy. Regarding article 26 she pointed out that, building on her own experience, she had taken the liberty of including the educational activities proposed by national preventive mechanisms within the scope of the Special Fund.

53. Finally, the Chairperson stated that article 30, which excluded the possibility of making reservations, had been discussed at length at previous sessions. Despite relevant provisions of the Vienna Convention on the Law of Treaties, she could not sanction reservations to a mechanism which was supposed to be universal and non-selective.

B. Debate on the proposal

54. At the 7th and 8th meetings, on 22 January 2002, a debate was held on the Chairperson's proposal. During the debate the High Commissioner for Human Rights addressed the working group. She expressed appreciation for the personal commitment and enormous efforts of the Chairperson in trying to reach consensus without losing sight of the objectives that had led to the establishment of the working group. Among the strong points of the proposal the High Commissioner noted the two-pillar system on which the mechanism of prevention would be based; the principles that should guide the functioning of the national mechanisms, including the reference to the Paris Principles; and the establishment of a subcommittee of the Committee against Torture that would provide assistance to the national mechanisms as well as be able to visit places where people were deprived of liberty and interview in private the persons held in them.

55. The Special Rapporteur on the question of torture also addressed the working group at the 7th meeting. He expressed appreciation for the proposal presented by the Chairperson, which he considered to be a very balanced one, and highlighted the following main points: (a) the proposed new international mechanism would complement the existing Charter-based and treaty monitoring mechanisms dealing with torture; (b) the proposal focused on prevention which, in his view, was even more important than redress; (c) it stressed the need for cooperation at all levels; (d) it put emphasis on the importance of interaction between national and international mechanisms.

56. All the delegations that intervened in the debate thanked the Chairperson and expressed appreciation for the effort she had made to tackle a very difficult task.

57. The delegation of the United States stated that the Chairperson's proposal was, in its view, unfortunately not a basis for consensus. The proposal would create an international subcommittee on torture that would have virtually unrestricted authority to visit and inspect any place where persons were or might be detained in any State Party to the optional protocol. Such unrestricted authority was incompatible with the principle of accountability and the need for reasonable checks and balances on any grant of power. Furthermore, the global reach of the subcommittee, as proposed in the draft of the Chairperson, was impractical; a regional framework would provide an important political context and local credibility to such a mechanism and was therefore more appropriate.

58. The delegation also indicated that the proposed subcommittee would not operate under the existing Committee against Torture. On the contrary, it would be essentially independent of the Committee and would erode the latter's authority by competing for resources.

59. The Chairperson's proposal that the international mechanism be funded from the regular budget of the United Nations rather than by the States which would avail themselves of the mechanism was considered objectionable by the delegation of the United States. It was unfair to States that chose not to join the regime, and was particularly inappropriate in a mechanism that was optional. The delegation renewed its request for an examination of funding alternatives in order to understand the budgetary implications of the various proposals and to make informed choices about budgetary priorities. The delegation also questioned the financial consequences for other human rights priorities of establishing a new mandatory visiting mechanism.

60. The delegation of the United States also expressed legal objections to the Chairperson's proposal. It noted that constitutional considerations such as appropriate restrictions on grants of authority for access to persons and places had not been accommodated. The reference to federated States was particularly inappropriate in an instrument that concerned itself with national measures and their encouragement. The delegation also suggested that efforts should be made to avoid re-opening the treaty law debate on prohibiting reservations. These two last elements of the Chairperson's proposal were considered unwise departures from current standard-setting trends. It was further noted that there were many additional questions and concerns which could be raised, in terms of both their legal and practical implications, in particular articles 3, 4, 26, and 31 as well as Parts III and IV.

61. Noting that the proposal did not command or provide a basis for consensus, the delegation of the United States questioned the Chairperson's intention to present it to the Commission on Human Rights. Highlighting the significant amount of time that had already been invested in this process, the delegation suggested that there was still time to work to try to reach consensus. Moreover, it stated that it was better to continue the work of the working group than to put forward an optional protocol that would not command consensus on the substance to the Commission.

62. The delegation recalled that in 1999 the United States, along with other States, had supported the development of draft language to ensure a balanced approach to the question of visiting mechanisms. The progress made on this approach had been indicated in the report of the seventh session of the working group (E/CN.4/1999/59 and Add.1, annex II, art. 12). Regrettably, that approach was not accommodated in the Chairperson's proposal. The delegation also recalled that in 2000, the United States and others had suggested steps to improve the operation of the Committee against Torture in ways that would reinforce its preventive work and encourage partnership with national mechanisms to prevent torture. The delegation referred to its alternative draft optional protocol, submitted during the 5th meeting,[6] which further elaborated ideas presented by it during previous sessions of the working group. The delegation requested that its alternative draft be included in the report of the session.

63. The delegation stated that its alternative draft optional protocol would strengthen international efforts to prevent torture. It was further noted that the alternative draft would recognize the valuable role visiting mechanisms, such as the European Committee for the Prevention of Torture, could play at the regional level; it would reinforce the Committee against Torture by establishing a subcommittee on prevention of torture that would work under the direction of the Committee; and would encourage strong national regimes aimed at the prevention of torture.

64. In summarizing its concerns regarding the proposal of the Chairperson, the delegation of the United States noted the following points: (a) the unrestricted authority proposed for both the subcommittee and the national mechanisms was incompatible with the principle of accountability and the need for reasonable checks and balances on any grant of power; (b) the proposal was not supported by many States and was unlikely to be widely accepted; and (c) the proposal undermined the Committee against Torture.

65. With reference to its alternative draft, the delegation pointed out that it was designed to strengthen existing mechanisms and to reinforce the credibility of the Committee against Torture. Additionally, the alternative draft could command broader support because it focused on improving the existing structure. The delegation further described its alternative draft as a balanced proposal, which recognized the role of regional mechanisms, encouraged strong national mechanisms and fostered partnership between the Committee against Torture and national mechanisms.

66. The delegation of Egypt stated that the Chairperson's text was not a basis for consensus. It agreed with comments made by the delegation of the United States and suggested that the working group should continue its work on the basis of the alternative draft optional protocol submitted by the United States of America. The delegation of Egypt noted, however, that it would be willing to go further than the American text.

67. Referring to the comments made by the Special Rapporteur on the question of torture, the delegation of Egypt noted the importance of the principle of complementing the existing Charter-based and treaty monitoring mechanisms. Additionally, the delegation highlighted the

need for cooperation and interaction to avoid overlapping and stated that the optional protocol should provide for functions different from those currently undertaken by the Committee against Torture or the Special Rapporteur. The delegation expressed concern that the Chairperson's text appeared to be an alternative Convention against Torture.

68. Concerning the issue of prevention, the delegation of Egypt pointed out that in trying to prevent torture in advance or by dissuasion, some fundamental differences emerged. Pressure and monitoring by international mechanisms was not the best way to fight torture. The delegation reiterated its preference for strong national mechanisms, and stated that prevention should also mean empowering States to learn how to better protect rights at the national level. The delegation was of the view that the proposal of the Chairperson took an extremely dangerous institutional approach. He expressed concern that with the establishment of the subcommittee, there would be five different international approaches to addressing the issue of torture. It also expressed concern that the interaction between the subcommittee, the Committee against Torture and the national mechanisms reflected in the proposal was inadequate.

69. The delegation of the Russian Federation stated that several paragraphs in the proposal evoked serious concern. The coordination regime between national and international mechanisms was insufficient. Furthermore, it expressed concern about the unlimited powers of the subcommittee and the national mechanisms and noted that this could entail serious legal consequences, including with respect to the international recognition of the protocol. The delegation regretted that there was no satisfactory solution to the financial issues raised in the protocol. The prohibition of reservations was also a matter of grave concern for the Russian Federation. Noting that the Chairperson's proposal was not a basis for consensus, the delegation proposed that the working group should continue to work on the text in the format presented by the Chairperson.

70. The delegation of Saudi Arabia indicated that the proposal did not take into consideration the concerns raised by some delegations, in particular his own as well as those of Egypt and the United States of America, which had submitted a clear proposal of which no account had been taken. In that connection, the delegation of Saudi Arabia recalled that States were not bound by the decisions of regional groups and non-governmental organizations.

71. The delegation of Saudi Arabia also stated that the proposal of the Chairperson could not be the basis for consensus. The delegation further stated that it would be difficult for it to accept the system of mandatory visits. The text gave the impression that there was a process to establish a subsidiary body with greater powers than those of the body to which it was to be subordinate. Article 15 was another source of concern, as it opened the possibility that the subcommittee could act on the basis of false information. This implied that the subcommittee would be able to damage the reputation of States and officials on the basis of erroneous information. The delegation questioned the expenditure of millions of dollars to investigate false information.

72. With reference to article 24 of the proposal, the delegation of Saudi Arabia recalled that all the rules governing international instruments permitted reservations and that the Vienna regime on reservations was clear on this point. It therefore questioned the legal basis for the inadmissibility of reservations.

73. Finally, it reiterated that it would be wrong to affirm that only a small number of States had reservations concerning the proposal and emphasized that many States shared his position, as would clearly be shown should a vote be held; however, it would be a pity for such an important protocol to be adopted by a vote.

74. The delegation of China noted that the Chairperson's draft reflected 10 years of hard work and marked a step forward for the working group. It welcomed the detailed provisions on national mechanisms as well as the information contained in the preamble, which explicitly provided that States had the primary responsibility in the prevention of torture. It noted, however, that States still held differing views, such as on the mandate of the subcommittee. There had been little change with regard to the role of national legislations; the differences had not been reconciled. The delegation suggested that the Chairperson should seek compromises on the issues with which some States still had difficulties.

75. The delegation of China noted that the international mechanism envisaged in the proposal was modelled on the European Convention on the Prevention of Torture and noted that the international mechanism of the optional protocol would have very little relevance for the States Parties to the European Convention. Additionally, Protocol No. 1 to the European Convention gave other States the opportunity to become parties to it by simply asking to be invited to do so. The delegation questioned the necessity of setting up a global mechanism modelled on the European Convention when that Convention could potentially be transformed into a global mechanism.

76. The delegation reiterated its support for an effective mechanism to prevent torture and noted that acceptance by a large number of countries was one of the essential elements to ensuring the effectiveness of the protocol. Noting its willingness to cooperate with the Chairperson and other delegations, the delegation of China called for further consultations. The delegation noted that the delegations of Egypt, Russia, Saudi Arabia and the United States of America had to some extent reflected the views of China.

77. The delegation of Japan stated that the Chairperson's proposal was not a basis for consensus and that more discussion was required in order to build the consensus, which had been the aim of the working group for 10 years.

78. The delegation of Japan stated that the prevention of torture was a universal aim and that the mechanism built into the protocol should be sufficiently strong and effective to prevent torture in all States. To attain this universal aim, it was essential for the optional protocol to be adopted by consensus. If the optional protocol did not reflect the concerns expressed by many States and could not expect significant participation, it would be neither a strong nor an effective mechanism. Recalling that the delegation had carefully studied the Chairperson's proposal and the opinions expressed by other delegations, Japan believed that efforts should continue in order to build consensus.

79. The delegation of Japan recalled that many points in the Chairperson's proposal still needed to be developed. With regard to the national mechanisms, the text formulated by the Chairperson was the first that had clearly identified a model for a national mechanism. However, it would be premature to make any comments on it. It was reiterated that Japan was

opposed to the mandatory establishment of national visiting mechanisms, and it would be difficult for the delegation to accept the idea of a national visiting mechanism as provided in articles 3 and 17 of the proposal.

80. The delegation indicated that Japan did not object in principle to an independent body as a national visiting mechanism. It also accepted in principle the idea of support by the international community in the establishment of the national visiting mechanisms in States that desired to establish them and needed the support of the international community. That was different, however, from the obligatory establishment of a national mechanism under the optional protocol. The national visiting mechanism described in the proposal was only one of the options for national preventive measures. There were no reasonable grounds for the establishment of a mandatory national visiting mechanism that would have basically the same mandate as an international visiting mechanism, and from that point of view Japan shared the concerns about duplication expressed by many other delegations.

81. The delegation of Japan recalled that many States had pointed to the usefulness of a national visiting mechanism. However, many of those States had also remarked that a flexible approach should be taken and that national mechanisms should be encouraged, but not mandatory. The proposal therefore required further discussion.

82. The delegation of Japan expressed the hope that a strong and effective international mechanism would be established; to do so would require not only ratification by many States, but also the cooperation of State parties in implementing the optional protocol. The interaction and dialogue between the subcommittee and the States Parties was also important. There had been concrete and detailed discussions at previous sessions of the working group on how to implement the international mechanism effectively. The importance of balancing the authority of the subcommittee and other legitimate interests, including the administration of justice, had been emphasized. The delegation expressed regret that important observations made by delegations in that regard were not reflected in the proposal. The delegation questioned why only the article regarding so-called "unrestricted access" had been kept in the proposal whereas the other important issues that had been discussed at prior sessions were not included.

83. The delegation reiterated that agreement could be reached by more concrete discussions based on a concrete text. For that purpose, it suggested that further discussion on the Chairperson's proposal take place in the working group; it would be premature to submit a final text to the Commission on Human Rights without making further efforts to achieve consensus. The delegation concluded that the alternative draft submitted by the United States should be included in the report of the working group in order to indicate clearly that there still existed differences of opinion and that there was a need for further discussion in the working group.

84. The delegation of Spain, on behalf of the European Union, the Central European and Eastern European States including the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, and the associated States of Cyprus, Malta and Turkey, indicated their support of the draft optional protocol presented by the Chairperson. They regretted that several important aspects of the draft presented by the European Union at the ninth session of the working group were not reflected in the draft of the Chairperson. While accepting the principle of a national mechanism, they expressed concern regarding its

mandatory nature, specially taking into account the existence of a regional mechanism to which all member States of the European Union were parties. The draft seemed a fair compromise that could lead the group out of the impasse. Their support, however, was limited strictly to the present text. Any weakening of the part relating to the international mechanism would lead the European Union to reconsider the issue.

85. The delegation of Switzerland noted that the Special Rapporteur on the question of torture supported the draft and that the proposal constituted a balance between an effective international mechanism and the need to have national mechanisms. It noted that article 24 placed the national and international mechanisms on an equal footing and made reference to a dual obligation combined with the possibility of postponing one or the other. The five-year period was acceptable to Switzerland as long as the Committee against Torture would be the authority for granting the extension and not the State Party itself. The delegation noted that this would be the only compromise politically and legally acceptable to Switzerland, even though it would be problematic for a federal State like Switzerland to accept the obligation to institute one or several national mechanisms for the prevention of torture. He noted that it would be difficult to foresee the reaction of the cantons, but that consultations would have to be undertaken. It concluded that, after 10 years of discussions, the Chairperson's proposal was a valid basis for negotiations.

86. The delegation of Guatemala stated that the proposal was balanced and flexible and hoped that it would reach the Commission on Human Rights as the draft of the working group. The time to consider new drafts was over. Some of the objections raised by delegations were the result of misinterpretation and could be overcome through further dialogue. The delegation would favour the removal of article 24 from the proposal, but was ready to accept it as a compromise.

87. The delegation of Canada expressed the hope that an optional protocol would be adopted in the near future. It further stated that the time allotted did not allow for the necessary consultations to be carried out in Canada regarding the Chair's proposal, in particular the provisions relating to the mandate and mandatory nature of domestic mechanisms. Such consultations could not be finalized before the end of the current session of the working group.

88. The delegation of Cuba stated that the proposal did not provide a satisfactory solution to many issues on which the group had been unable to reach consensus in the past. For instance, the draft was vague as to the places of detention to be visited and the persons to be interviewed; article 5 did not stipulate regional quotas in the membership of the subcommittee; the criteria for carrying out "short visits" were not clearly stated; the confidentiality of the procedure was not fully ensured; and article 24 did not resolve many of the concerns expressed by delegations. The draft neither safeguarded the legitimate interests of States nor guaranteed the principles of impartiality, objectivity and non-selectivity. The delegation was ready to continue the negotiations on a draft optional protocol. The final text should only be adopted by consensus.

89. The delegation of India indicated that it had listened to statements concerning the proposal and noted the absence of consensus. It recalled that the two optional protocols to the Convention on the Rights of the Child had recently been adopted by consensus and reiterated the importance of ensuring a consensual approach in the adoption of the optional protocol to the

Convention against Torture. While noting that it was not always possible to achieve consensus, the delegation of India pointed out that it would be a dangerous precedent for this optional protocol to be voted on and stressed that every effort should be made to avoid a vote. It was in favour of the United States alternative draft and underlined that the new mechanisms should seek to avoid duplicating existing ones. It concluded that additional time was needed to examine the Chairperson's proposal further.

90. The delegation of Latvia supported the statement made by the delegation of Spain on behalf of the European Union and other countries. While noting that the Chairperson's proposal had contributed to bringing the working group closer to its goal, further discussion was still necessary. It was noted that Part III was balanced and provided a good starting point for the subcommittee. It was also noted that more emphasis should be placed on the issue of independence and prevention. While noting that it would have preferred stronger links between the national and international mechanisms, the delegation supported the proposal and indicated that it should constitute the basis for future discussions.

91. The delegation of the Syrian Arab Republic indicated that it had hoped that the Special Rapporteur on the question of torture would have responded to some of the concerns raised by the delegation of Egypt. It acknowledged that torture was a flagrant violation of human rights, but suggested that the necessary changes and the preventive work should come from within States and not be imposed from the outside. The delegation believed that the Chairperson's proposal was not a balanced one, since it gave great power to the international mechanism and insufficient power to the national mechanisms. In order to ensure wide acceptance and ratification of the optional protocol, greater efforts must be made to ensure a more equitable balance between the national and international mechanisms. The delegation expressed concern regarding the issue of funding and suggested that funds should be allocated for technical assistance and support to national mechanisms and humanitarian organizations working against torture. In its view, the provisions in the proposal concerning sanctions, reservations and the visiting authority of the international mechanism were too broad. It finally expressed support for the proposals made by Egypt and the United States.

92. The delegation of Kuwait, referring to the statements made by the delegations of Saudi Arabia and the Syrian Arab Republic, stated that its country similarly supported the proposal submitted by the United States of America and should like to see it as the basis for discussion. It further stated that, in order to reach consensus, due consideration should be given to the positions expressed by all parties. It further suggested that additional efforts should be made to promote the existing mechanisms.

93. The delegation of New Zealand commended the Chair's efforts to reach a compromise by drawing upon the various proposals that had been made. It therefore expressed support for the Chairperson's text as a sign of New Zealand's long-standing support for a strong international mechanism for the prevention of torture and protection of those deprived of their liberty. It expressed appreciation for the dual system proposed and envisaged that a robust international mechanism working hand-in-hand with a well-resourced, independent national mechanism or mechanisms would provide a comprehensive system for the prevention of torture. It was important that the Chairperson's proposal should receive the widest possible support.

94. The delegation of Norway associated itself with the statement made by the representative of Spain on behalf of the European Union and others, and stressed that it would have wished to see an optional protocol with an even stronger international mechanism. However, in light of the diverging views expressed in the working group and the need for compromise, the Chairperson's proposal would have Norway's support, as it tried to strike a balance between these diverging views and to meet the concerns of all delegations.

95. The delegation of Hungary associated itself with the statement made by the representative of Spain on behalf of the European Union and others and noted that it was unrealistic to hope that any draft would please all Governments entirely. The delegation welcomed the fact that the Chair's proposal focused on prevention and ensured the establishment of an effective international mechanism. Torture was often anonymous and regular visits would help to eliminate such anonymity. While recognizing that national mechanisms could be complementary to an international mechanism, the delegation was not convinced that their establishment, especially on a mandatory basis, should take place within the framework of the optional protocol. It considered the Chair's proposal as the best compromise achievable.

96. The delegation of Argentina said that the proposal constituted a solid basis for reaching a compromise. This was particularly relevant in the wording of articles 13, 17 and 19. Furthermore, the draft excluded visits by the international mechanism at "any time", which many delegations opposed. The Government of Argentina favoured consensus and negotiations should continue in order to adopt a final text.

97. The delegation of Israel noted that despite the constructive dialogue, substantial differences remained and it would be undesirable to use the Chairperson's proposal as a basis for negotiation. It therefore expressed support for the views of the United States in that respect.

98. The delegation of Algeria considered that more time and effort would be necessary and that the draft still needed to be improved.

99. The delegation of Slovenia reiterated its support for the proposal, as indicated in the statement made by the representative of Spain on behalf of the European Union and a number of other countries. With regard to article 24, it stressed that the declaration could be made concerning one or the other mechanism, but not both.

100. The delegation of Mexico expressed support for the proposal, which it considered to be very balanced. The idea of an international visiting mechanism was not new and was contained, for example, in the Chemical Weapons Convention. It would have liked to see a reference in the preamble to articles 55 and 56 of the Charter. It would also have liked to see article 13 of the proposal include some of the elements contained in paragraphs 1 (a), 2 and 3 of article 9 of the European Union draft, such as the reiteration of the principle of transparency. Despite its opposition to article 24, the delegation was prepared to accept it in order to reach consensus. The postponement referred to in that provision should, however, be strictly limited to three years.

101. The delegation of Ecuador supported the proposal, which it considered to be comprehensive and balanced on key issues. Recognizing that the question of visits by an international mechanism was very controversial, it welcomed the provision contained in

article 24. It added that, in order to reach consensus, the group might consider the possibility of allowing States Parties to postpone their obligations under Part III of the proposal for an unlimited period of time. The delegation also expressed the view that negotiations should continue in order to reach consensus.

102. The International Commission of Jurists made a statement on behalf of Amnesty International, the Association for the Prevention of Torture, Human Rights Watch, the International Federation of Action by Christians for the Abolition of Torture, the International Rehabilitation Council for Torture Victims, the International Federation of Human Rights Leagues, Redress and the World Organization against Torture. While the draft did not contain all of the elements that NGOs would have included in a preventive instrument, it did contain essential elements that would assist States Parties in implementing their obligations under the Convention against Torture and add value to existing efforts to prevent torture. The NGOs pointed out that the alternative draft submitted by the delegation of the United States ignored the mandate of the working group as it did not envisage visits as a central purpose of the optional protocol. It was imperative that all States commit themselves fully and in equal measure to the international visiting regime, as elaborated in Part III of the Chairperson's proposal, and to the establishment or maintenance of national visiting mechanisms, as per Part IV of the proposal. Without such a commitment, the entire two-pillar foundation of the protocol would topple.

103. With respect to article 24 of the Chairperson's draft, the NGOs stated that where a State made a declaration of postponement because of its inability to comply with the full range of its obligations, it should be required immediately to begin undertaking measures towards eventual implementation.

104. The delegation of Turkey stated that the working group had reached a new phase with the proposal presented by the Chairperson and called for a successful conclusion of the work leading to the adoption of a text. However, it noted that there was still no consensus and considered that a flexible approach would be necessary. It also stated that it was important to reach consensus on a draft in the working group.

105. The delegation of Georgia expressed support for the position of the European Union and recognized the difficulty in reaching consensus at this stage. The Chairperson's proposal could be improved but constituted a solid basis for reaching a compromise.

106. The delegation of Uruguay supported the proposal and considered that the visiting system was fundamental for the protection of torture victims. The negotiations should therefore continue.

107. The delegation of Poland reiterated its support for the position of the European Union and stated that after many years of negotiations it was obvious that a protocol was needed. It recalled that Poland had supported the Costa Rican draft from the very beginning. While expressing concern about article 24 of the Chairperson's proposal, the delegation was ready to support the proposal as currently presented.

108. The delegation of the Libyan Arab Jamahiriya made a statement on behalf of Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates, Yemen and Palestine. It said that those delegations supported every international endeavour that was being made to combat torture throughout the world. Such endeavours could not be made at random; they must be made in the light of constant factors, the most important of which was the need to strengthen, rather than weaken, the existing international mechanisms and ensure complementarity. For the Arab Group, the starting point was the need for the Convention against Torture and the Committee against Torture to remain the principal convention and the principal committee. The establishment of independent national mechanisms was a fundamental requirement in order to improve conditions in penal institutions. The role of the international mechanism should be of an ancillary nature, consisting of the provision of technical advice and financial assistance. Accordingly, the Arab Group was not in favour of a subcommittee endowed with mandatory authority to visit States without their consent.

109. Moreover, the Arab Group believed that the introduction of a technically and financially supportive international dimension could strengthen the role of the national mechanisms and should take place under the supervision of the Committee against Torture. The achievement of this goal required a collective political will and joint commitment to dialogue in good faith and on an equal footing. Therefore, the Arab Group could not agree to any group imposing its own view, nor could it agree to renounce the principle of consensus as the most appropriate means of ensuring the universality of the international standards and rules which were in the process of being negotiated.

110. While considering that the proposal could be improved with the addition of ideas contained in other drafts or expressed during the debate, the delegation of El Salvador considered that the proposal could constitute a basis for compromise. It encouraged delegations to continue working in that direction.

111. The delegation of Peru also expressed support for the proposal and underlined the importance of combining the international and national visiting mechanisms. It expressed the hope that consensus would be reached.

112. The delegation of Costa Rica emphasized the efforts to reach a compromise reflected in the proposal and stressed the main points contained in it. Those delegations which were not in favour of an efficient prevention mechanism, many of which were not even parties to the Convention against Torture, should not be allowed to impose their views by prolonging the debate unnecessarily.

113. The delegation of the Czech Republic expressed support for a strong international mechanism and indicated that any weakening of the Chairperson's proposal would render that proposal unacceptable to the delegation.

114. Finally, the delegation of Chile supported the two-pillar system and called on the delegations to try to reach a compromise.

IV. CLOSING MEETING

115. At the 9th meeting, Mr. Andreas Mavrommatis, member of the Committee against Torture, addressed the working group. Mr. Mavrommatis congratulated the Chairperson for the work she had carried out and encouraged her to pursue her efforts in order to find a compromise. He stated that, in the Committee's view, the provisions of the Convention dealing with prevention were insufficient and that the Committee was in favour of a new legally binding instrument which would set up an international mechanism dealing specifically with prevention. Regarding the procedure under article 20 of the Convention, he indicated that the Committee could initiate an inquiry only when it received well-founded indications that torture was being practised systematically in a country; hence, it was not a procedure intended to focus on prevention, although it could help to prevent inasmuch as it deterred. He did not believe that there would be duplication between the visits of the Committee under article 20 and the preventive visits of the subcommittee. Mr. Mavrommatis further indicated that the optional protocol should contain basic principles regarding the relationship between the Committee and the subcommittee, so as to avoid duplication and ensure consistency and harmonization. These basic principles could subsequently be developed in the respective rules of procedure.

116. Also at the 9th meeting, some delegations made comments on the draft report of the session that had been distributed earlier.

V. ADOPTION OF THE REPORT

117. The report of the working group was adopted ad referendum at the 9th meeting on 24 January 2002.

Notes

[1] At the tenth session of the working group the delegation of Mexico stated that it would not insist on its proposal, presented at the ninth session of the working group. It also supported the creation of a strong international visiting mechanism for the prevention of torture.

[2] See annex II.

[3] Protocol I opens to any interested State the possibility of acceding to the Convention at the invitation of the Committee of Ministers of the Council of Europe.

[4] E/CN.4/2002/WG.11/CRP.1.

[5] E/CN.4/1998/42 of 2 December 1997, paras. 81-88.

[6] See para. 26 above.

ANNEXES

Annex I

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Proposal by the Chairperson-Rapporteur

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing these articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all, and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial or other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention which is intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

PART I

GENERAL PRINCIPLES

Article 1

The objective of this Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and will be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

THE SUBCOMMITTEE ON PREVENTION

Article 5

1. The Subcommittee on Prevention shall consist of 10 members. After the fiftieth ratification or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to 25.

2. The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee due consideration shall be given to the equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to the balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee may be nationals of the same State.

6. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties which have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee by secret ballot;

(d) Elections of the members of the Subcommittee shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting;

2. If, during the election process, two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of

competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

MANDATE OF THE SUBCOMMITTEE ON PREVENTION

Article 11

The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working toward the strengthening of the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid out in article 11, the States Parties undertake to:

(a) Receive the Subcommittee on Prevention in its territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) Share all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted in order to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(c) Encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) Examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify its programme to the States Parties in order that they may, without delay, make the necessary practical arrangements for the visits to take place.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members can be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it can propose a short follow-up visit after regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of these persons as well as their conditions of detention;

(c) Subject to paragraph 2, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person whom the Subcommittee on Prevention believes may supply relevant information;

(e). The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention can only be made on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited which temporarily prevent the carrying out of such a visit. The existence of a declaration of a state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the Subcommittee's recommendations, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the Subcommittee's report.

PART IV

NATIONAL PREVENTIVE MECHANISMS

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol, if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures in order for the experts of the national mechanism to have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status and functioning of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at least the powers to:

(a) Regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection from torture, cruel, inhuman or degrading treatment or punishment;

(b) Make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) Submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of these persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person whom the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

DECLARATION

Article 24

1. Upon ratification, States Parties can make a declaration postponing the implementation of their obligations either under Part III or under Part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend this period for an additional two-year period.

PART VI

FINANCIAL PROVISIONS

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention to a State Party after a visit, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

FINAL PROVISIONS

Article 27

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to adopt with respect to the State Party concerned, nor

shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Subcommittee on Prevention prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional process.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy.

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Annex II

A. DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

ORIGINAL TEXT PROPOSED BY COSTA RICA IN 1991*

PREAMBLE

The States Parties to the present Protocol,

Considering that in order to further achieve the purpose of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) it is appropriate to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment, by resorting to non-judicial means of a preventive character based on visits,

Have agreed as follows:

PART I

Article 1

1. A State Party to the present Protocol agrees to permit visits, in accordance with this Protocol, to any place within its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are held or may be held.

2. The object of the visits shall be to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from other cruel, inhuman or degrading treatment or punishment in accordance with international standards.

Article 2

The Committee against Torture shall establish a Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Subcommittee); the Subcommittee shall be responsible for organizing missions to the States Parties to the present Protocol for the purposes stated in article 1.

Article 3

In the application of this Protocol, the Subcommittee and the competent national authorities of the State Party concerned shall cooperate with each other.

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* As contained in E/CN.4/1991/66.

PART II

Article 4

1. The Subcommittee shall consist of a maximum of 25 members. While there are less than 25 States Parties to the present Protocol, the number of members of the Subcommittee shall be equal to that of the States Parties.

2. The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of the international protection of human rights.

3. No two members of the Subcommittee may be nationals of the same State.

4. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee effectively.

Article 5

1. The members of the Subcommittee shall be elected by the Committee against Torture by an absolute majority of votes from a list of persons possessing the qualifications prescribed in article 4 and nominated by the States Parties to the present Protocol.

2. Within three months of the entry into force of the present Protocol, the accession of a new member or a vacancy, each State Party shall nominate three persons, at least two of whom shall possess its nationality. They shall be indicated in alphabetical order.

3. Subject to article 4, paragraph 1, the Committee against Torture shall hold elections whenever there is an accession to the present Protocol or a vacancy in the Subcommittee.

4. A member shall be eligible for re-election if renominated.

Article 6

1. The members of the Subcommittee shall be elected for a period of four years. However, among the members elected at the first election, the terms of five members, to be chosen by lot, shall expire at the end of two years.

2. In the election of the members of the Subcommittee, consideration shall be given to equitable geographical distribution of membership, to a proper balance among the various fields of competence referred to in article 4, paragraph 2, and to the representation of different traditions and legal systems.

Article 7

1. The Subcommittee shall meet for a regular session at least twice a year; for special sessions at the initiative of its Chairman or at the request of not less than one third of its members.

2. The Subcommittee shall meet in camera. Half of the members shall constitute a quorum. The decisions of the Subcommittee shall be taken by a majority of the members present, subject to article 14, paragraph 2.

3. The Subcommittee shall draw up its own rules of procedure.

4. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee against Torture and the Subcommittee under this Protocol.

PART III

Article 8

1. The Subcommittee shall establish a programme of regular missions to each of the States Parties. Apart from regular missions, it shall also undertake such other missions as appear to it to be required in the circumstances.

2. The Subcommittee shall postpone any such mission if the State Party concerned has agreed to a visit to its territory by the Committee against Torture pursuant to article 20, paragraph 3, of the Convention.

Article 9

1. If, on the basis of a regional convention, a system of visits to places of detention similar to the one of the present Protocol is in force for a State Party, the Subcommittee shall only in exceptional cases, when required by important circumstances, send its own mission to such a State Party. It may, however, consult with the organs established under such regional conventions with a view to coordinating activities including the possibility of having one of its members participate in missions carried out under the regional conventions as an observer. Such an observer shall report to the Subcommittee. This report shall be strictly confidential and shall not be made public.

2. The present Protocol does not affect the provisions of the Geneva Conventions of 12 August 1949 for the protection of victims of war and their Additional Protocols of 8 June 1977 by which the Protecting Powers and the International Committee of the Red Cross visit places of detention, or the right of any State Party to authorize the International Committee to visit places of detention in situations not covered by international humanitarian law.

Article 10

1. As a general rule, the missions shall be carried out by at least two members of the Subcommittee, assisted by experts and interpreters if necessary.

2. No member of a delegation shall be a national of the State to be visited.

Article 11

1. Experts shall act on the instructions and under the authority of the Subcommittee. They shall have particular knowledge and experience in the areas covered by this Protocol and shall be bound by the same duties of independence, impartiality and availability as the members of the Subcommittee.

2. A State Party may exceptionally and for reasons given confidentially declare that an expert or other person assisting the Subcommittee may not take part in a mission to its territory.

Article 12

1. The Subcommittee shall notify the Government of the State Party concerned of its intention to organize a mission. After such notification, it may at any time visit any place referred to in article 1, paragraph 1.

2. The State Party within whose jurisdiction a mission is to take place or is being carried out shall provide the delegation with all the facilities necessary for the proper fulfilment of their tasks and shall not obstruct by any means or measures the programme of visits or any other activities which the delegation is carrying out specifically for or in relation to the visits. In particular, the State Party shall provide the delegation with the following facilities:

(a) access to its territory and the right to travel without restriction;

(b) full information on the places referred to in article 1, paragraph 1, including information requested about specific persons;

(c) unlimited access to any place referred to in article 1, paragraph 1, including the right to move inside such places without restriction;

(d) assistance in gaining access to places where the delegation has reason to believe that persons may be deprived of their liberty;

(e) producing any person deprived of his liberty whom the delegation wishes to interview, at the request of the delegation and at a convenient location;

(f) other information available to the State Party which is necessary for the delegation to carry out its task.

3. Members of the delegation may interview in private, inside or outside his place of detention, without witnesses, and for the time they deem necessary, any person deprived of his liberty under the terms of article 1. They may also communicate without restriction with relatives, friends, lawyers and doctors of persons who are or have been deprived of their liberty, and with any other person or organization that they think may be able to provide them with relevant information for their mission. In seeking such information, the delegation shall have regard to applicable rules of national law relating to data protection and principles of medical ethics.

4. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee or to the delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

5. In urgent cases the delegation shall at once submit observations and recommendations either of general or specific nature to the competent authorities of the State Party concerned.

Article 13

1. In the context of a mission, the competent authorities of the State Party concerned may make representations to the Subcommittee or its delegation against a particular visit if urgent and compelling reasons relating to serious disorder in the particular place to be visited temporarily prevent the carrying out of the visit.

2. Following any such representation, the Subcommittee and the State Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Subcommittee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Subcommittee proposed to visit. Until the visit takes place, the State Party shall provide information to the Subcommittee about any person concerned.

Article 14

1. After each mission, the Subcommittee shall draw up a report on the facts found during the mission, taking account of any observations which may have been submitted by the State Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary and may consult with the State Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

2. If the State Party fails to cooperate or refuses to improve the situation in the light of the Subcommittee's recommendations, the Committee against Torture may at the request of the Subcommittee decide by a majority of its members, after the State Party has had an opportunity to make known its views, to make a public statement on the matter or to publish the Subcommittee's report.

3. The Subcommittee shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

4. In all other respects, the information gathered by the Subcommittee and its delegation in relation to a mission, its report and its consultation with the State Party concerned shall remain confidential. Members of the Committee against Torture, the Subcommittee, its delegations and their staff are required to maintain confidentiality during and after their terms of office.

Article 15

1. The Committee against Torture shall examine the reports and recommendations which may be submitted to it by the Subcommittee. It shall keep them confidential as long as no public statement in accordance with article 14, paragraph 2, has been made or as long as they have not become public in accordance with article 14, paragraph 3, of this Protocol.

2. Subject to the rules of confidentiality, the Subcommittee shall every year submit a general annual report on its activities to the Committee against Torture, which shall include information on the activities under this Protocol in its annual report to the General Assembly of the United Nations in accordance with article 24 of the Convention.

PART IV

Article 16

The expenditures incurred by the implementation of the present Protocol, including all its missions, shall be borne by the United Nations.

[1. States Parties shall contribute to the expenditure incurred in the implementation of the present Protocol on the basis of the scale used by the United Nations.

2. There may be established a Special Fund based on voluntary contributions of States, intergovernmental organizations, non-governmental organizations, private institutions and individuals.

3. The Special Fund shall supplement the financing by the States Parties of all the activities provided for in this Protocol. It shall be managed by the Subcommittee, which shall report to a Board of Trustees appointed by the States Parties.

4. Any expenses, such as the cost of staff, interpreters and facilities, incurred by the United Nations pursuant to article 7, paragraph 4, shall be reimbursed by contributions of the States Parties and the Special Fund].

Article 17

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification or open to accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 18

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

3. No reservations may be made in respect of the provisions of this Protocol.

Article 19

Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties, the Committee against Torture and the Subcommittee. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article 20

The members of the Subcommittee and of its delegations shall be entitled to the facilities, privileges and immunities referred to in article 23 of the Convention.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States.

B. TEXT OF THE ARTICLES WHICH CONSTITUTE THE OUTCOME OF THE SECOND READING AT THE FIFTH, SIXTH AND SEVENTH SESSIONS OF THE WORKING GROUP*

Article 2

There shall be established a Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Subcommittee); the Subcommittee shall be responsible for organizing missions to the States Parties to the present Protocol for the purposes stated in article 1.

Article 3

1. In the application of this Protocol the Subcommittee and the State Party concerned shall cooperate with each other.

2. The Subcommittee shall conduct its work within the framework of the Charter of the United Nations and be guided by the purposes and principles therein.

3. The Subcommittee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

Article 4

1. The Subcommittee shall consist of 10 members. After the fiftieth accession to the present Protocol, the number of members of the Subcommittee shall increase to 25.

2. The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Subcommittee may be nationals of the same State.

4. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee effectively.

Article 5

1. Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 4, and in doing so shall provide detailed information on the qualifications of the nominees.

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* As contained in document E/CN.4/1999/59, annex I. The number in brackets refers to the number of the article in the first-reading text (E/CN.4/1996/28, annex I).

2. (a) Nominees of the Subcommittee shall have the nationality of a State Party to the present Protocol.

(b) At least one of the two candidates shall have the nationality of the nominating State Party.

(c) Not more than two nationals of a State Party shall be nominated.

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the written consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them.

Article 6

The members of the Subcommittee shall be elected in the following manner:

1. Elections of the members of the Subcommittee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. The initial election shall be held no later than six months after the date of entry into force of the present Protocol.

3. The States Parties shall elect the members of the Subcommittee by secret ballot.

4. In the election of the members of the Subcommittee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 4. Furthermore, due consideration shall be given to a proper balance among the various fields of competence referred to in article 4, to equitable geographical distribution of membership and to the representation of different forms of civilization and legal systems of the States Parties.

5. Consideration shall also be given to balanced representation of women and men on the basis of the principles of equality and non-discrimination.

6. If, during the election process, two nationals of a State Party have become eligible to serve as members of the Subcommittee, the membership of the Subcommittee shall be resolved in the following manner in conformity with article 4, paragraph 3:

(a) The candidate receiving the higher number of votes shall serve as the member of the Subcommittee.

(b) Where the nationals have received the same number of votes, the following procedure applies:

(i) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee;

(ii) Where both nationals have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall be the member;

(iii) Where neither national has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which national shall be the member.

Article 7

If a member of the Subcommittee dies or resigns or for any other cause can no longer perform the member's Subcommittee duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 4, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9 [6]

The members of the Subcommittee shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 6, paragraph 1.

Article 10 [7]

1. The Subcommittee shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Subcommittee shall be made by a majority vote of the members present;

(c) The Subcommittee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee. After its initial meeting, the Subcommittee shall meet at such times as shall be provided in its rules of procedure.

Article 11 [9]

1. The Subcommittee may decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention. The dates of the rescheduled mission shall be determined taking into account the provisions of articles 1 and 8.

2. The Subcommittee, while respecting the principles set out in article 3, is encouraged to cooperate for the prevention of torture in general with the relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3. If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Subcommittee shall still be responsible for missions to such a State Party under this Protocol, assuring its universal application. However, the Subcommittee and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to the efficient promotion of the objectives of this Protocol, including on the matter of duplication of work.

Such cooperation may not exempt the States Parties belonging also to such conventions from cooperating fully with the Subcommittee.

4. The provisions of the present Protocol do not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, or the possibility for any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 13 [consolidated 10 and 11]

1. Missions should be carried out by at least two members of the Subcommittee, assisted by interpreters if necessary. If needed, the Subcommittee may be assisted by experts.

2. The Subcommittee shall upon deciding the composition of the mission take into account the particular objectives of the mission.

3. (a) The Subcommittee shall consult confidentially the State Party concerned, in particular regarding the composition and size of the mission other than with regard to the participating members of the Subcommittee.

(b) The State Party concerned may oppose the inclusion of an expert or interpreter in the mission to the territory under its jurisdiction, whereupon the Subcommittee shall propose alternatives.

4. No member of the delegation, with the exception of interpreters, may be a national of the State to be visited. The conduct of the delegation and of all of its members shall be bound by the criteria of independence, impartiality, objectivity and confidentiality.

5. Experts shall be subordinate to and assist the Subcommittee. With regard to a mission, they shall in all respects act on the instruction of and under the authority of the Subcommittee. They shall in no case undertake any missions by themselves under the present Protocol.

Article 14

1. In order to establish a list of experts available for the Subcommittee, each State Party may propose no more than five national experts, qualified in the areas covered by the present Protocol, giving due consideration to gender balance.

2. As needed, the United Nations and specialized agencies may also propose experts to be included on that list.

3. The Subcommittee will annually notify the States Parties of the comprehensive list of experts.

4. In special cases, where specific knowledge or experience is required for a particular mission, and such knowledge or experience is not available on the list of experts, the Subcommittee may include in a mission an expert who is not on the list.

5. In selecting experts for a mission, the Subcommittee shall give primary consideration to the professional knowledge and skills required, taking into account regional and gender balance.

Article 15 [12 bis]

Each State Party shall disseminate information about the present Protocol, the tasks of the Subcommittee and the facilities to be provided to the Subcommittee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to in article 1.

Article 16 [16]

1. The expenditure incurred by the implementation of the present Protocol, including missions, shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the present Protocol.

Article 17 [16 bis]

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee to a State Party expressing the need for additional assistance for its ongoing efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations as well as other private or public entities.

Article 18 [17]

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 19 [18]

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 20 [18 bis]

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 21 [19]

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Subcommittee has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Subcommittee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Subcommittee shall not commence consideration of any new matter regarding that State.

Article 22 [19 bis]

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional process.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 23 [20]

Members of the Subcommittee and of missions authorized under the present Protocol shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 24

In the conduct of missions, all members shall without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 25 [21]

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

C. ALTERNATIVE PRELIMINARY DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, SUBMITTED BY THE DELEGATION OF MEXICO WITH THE SUPPORT OF THE LATIN AMERICAN GROUP (GRULAC) AT THE NINTH SESSION OF THE WORKING GROUP IN 2001*

PREAMBLE

The States Parties to the present Optional Protocol,

Recognizing that torture and other, cruel, inhuman or degrading treatment or punishment are prohibited,

Recalling that articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment require each State Party to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Further recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires a combination of legislative, administrative, judicial and other measures,

Recognizing that States have the primary responsibility for implementing international law and the relevant international standards, that strengthening the protection of and full respect for human rights is a common responsibility shared by all and that international mechanisms are complementary to national measures,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment may be strengthened by non-judicial means of a preventive character based on visits to places of detention,

Desiring to undertake an international commitment to make the prevention of torture and other cruel, inhuman or degrading treatment or punishment more effective,

Have agreed as follows,

PART I

Article 1

Each State Party to the present Protocol shall establish or maintain, at the national level, a visiting mechanism for the prevention of torture and other cruel, inhuman or degrading treatment

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* At the tenth session of the working group the delegation of Mexico stated that it would not insist on its proposal presented at the ninth session of the working group.

or punishment (hereinafter referred to as the national mechanism), which shall carry out visits to places in any territory under its jurisdiction where persons may be or are deprived of their liberty pursuant to an order of a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention), with a view to strengthening, if necessary, the protection of such persons from torture and other cruel, inhuman or degrading treatment or punishment.

Article 2 (former art. 2, amended)

There shall be established a Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Subcommittee):

1. The Subcommittee shall be responsible for supporting and supervising the work carried out by national mechanisms in accordance with the provisions of the present Protocol;

2. The Subcommittee shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles enunciated therein;

3. The Subcommittee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

PART II

Article 3

Each State Party shall establish a national mechanism at the highest possible level within one year of the entry into force of, or of its accession to, the present Protocol.

Article 4

1. When setting up a national mechanism, each State Party shall guarantee its functional independence and the independence of its staff.

2. Each State Party shall take the necessary measures to ensure that the members of the national mechanism have the professional knowledge and skills required. It shall also take account of the gender balance and the need to ensure that ethnic groups and minorities are adequately represented.

3. The members shall be chosen from among persons of high moral character having proven professional experience in the field of the practice of law and the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

Article 5

National mechanisms shall have the following powers, as a minimum:

(a) To examine the situation of persons deprived of their liberty with a view to strengthening, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the competent authorities with a view to improving the treatment and conditions of persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment;

(c) To propose or comment on draft or existing legislation on this question;

(d) To take any initiatives that would help States Parties fulfil their obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant international instruments.

Article 6

1. In order to assess the situation of persons deprived of their liberty and to make the relevant recommendations, national prevention mechanisms shall carry out visits to places where persons are deprived of their liberty; they shall have:

(a) Unrestricted access to all relevant information concerning the number of persons deprived of their liberty pursuant to an order of a public authority or at its instigation or with its consent or acquiescence, as well as the number of places and their location;

(b) Unrestricted access to all information relevant to treatment and conditions of detention;

(c) Unrestricted access to all places where persons are deprived of their liberty;

(d) Unrestricted access to all premises where persons are deprived of their liberty;

(e) Freedom to interview persons deprived of their liberty, without witnesses, personally or with the assistance of an interpreter, if required, as well as of any personnel deemed necessary;

(f) Freedom to select the places they wish to visit;

(g) Unrestricted freedom to contact, inform and meet with the Subcommittee .

2. Such visits may not be prohibited except in cases of absolute military necessity or serious disturbances in the place to be visited and then only as an exceptional and temporary measure. The organization, frequency and duration of such visits may not be restricted.

3. No person or organization may be penalized or otherwise harmed for having provided relevant information to a national mechanism.

Article 7

1. National mechanisms shall:

(a) Inform the competent authorities of their observations and make recommendations to them;

(b) Regularly inform the Subcommittee of their observations and recommendations.

2. No personal data shall be made public without the prior consent of the person concerned, subject to liability.

Article 8

Each State Party to the present Protocol undertakes to implement the recommendations made by its national mechanism.

PART III

Article 9 (former art. 4)

1. The Subcommittee shall be composed of 10 members. After the fiftieth accession to the present Protocol, the number of members of the Subcommittee shall increase to 25.

2. The members of the Subcommittee shall be chosen from among persons of high moral character having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Subcommittee may be nationals of the same State.

4. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee effectively.

Article 10 (former art. 5)

1. Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 9, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) Nominees of the Subcommittee shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) Not more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the written consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them.

Article 11 (former art. 6)

1. The members of the Subcommittee shall be elected in the following manner:

(a) Elections of the members of the Subcommittee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting;

(b) The initial election shall be held no later than six months after the date of the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee by secret ballot;

(d) In the election of the members of the Subcommittee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 9. Furthermore, due consideration shall be given to the equitable geographical distribution of membership and to the representation of the different forms of civilization and legal systems of the States Parties.

2. Consideration shall also be given to the balanced representation of women and men on the basis of the principles of equality and non-discrimination.

3. If, during the election process, two nationals of a State Party have become eligible to serve as members of the Subcommittee, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee.

Article 12 (former art. 7)

If a member of the Subcommittee dies or resigns or for any other cause can no longer perform the member's Subcommittee duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 9, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 13 (former art. 9 [6])

The members of the Subcommittee shall be elected for a term of four years. They shall be eligible for re-election once if re-nominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 11, paragraph 1.

Article 14 (former art. 10 [7])

1. The Subcommittee shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one of its members shall constitute a quorum;

(b) Decisions of the Subcommittee shall be made by a majority vote of the members present;

(c) The Subcommittee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee. After its initial meeting, the Subcommittee shall meet at such times as shall be provided in its rules of procedure.

PART IV

Article 15

The Subcommittee shall have as its mandate to:

1. Advise and assist States Parties, when necessary, in the establishment of national mechanisms;

2. Maintain close contact with national mechanisms and provide them with training and advice with a view to strengthening their capacities;

3. Provide national mechanisms with assistance and advice in assessing needs and measures in order to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

4. Supervise the functioning of national mechanisms;

5. Make recommendations to national mechanisms and to States Parties on measures to strengthen, if necessary, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

6. Make recommendations and observations to States Parties with a view to strengthening the capacities and mandate of national mechanisms for the prevention of torture.

Article 16

1. In order to enable the Subcommittee to fulfil its mandate as set out in article 15, States Parties undertake to:

(a) Facilitate contact between the Subcommittee and national mechanisms;

(b) Receive the Subcommittee in their territory when required;

(c) Implement the recommendations of the Subcommittee.

2. The Subcommittee may request any information from national mechanisms that may enable it to assess needs and the measures to be taken to strengthen the protection of persons deprived of their liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment, including information concerning the number and location of places of detention, the persons deprived of their liberty and their treatment.

Article 17

1. The Subcommittee shall inform the Committee against Torture and the State Party concerned of its recommendations and observations.

2. The Subcommittee shall submit an annual report of its activities to the Committee against Torture.

Article 18

1. The Subcommittee and the State Party concerned shall cooperate with each other in the implementation of this Protocol (**former art. 3, para. 1**).

2. The Subcommittee should cooperate in the prevention of torture with all bodies and mechanisms and with all international or regional mechanisms working to strengthen the protection of persons deprived of their liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment.

Article 19

1. The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention based on a system of visits to places of detention. The Subcommittee and the bodies established on the basis of such regional mechanisms shall consult and cooperate in order to promote effectively the objectives of the present Protocol and avoid any duplication of work.

2. The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, or the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 20 (former art. 16, amended)

1. The expenditure incurred by the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the staff and services necessary for the effective performance by the Subcommittee of its functions under the present Protocol.

Article 21 (former art. 17 [16 bis])

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations of the Subcommittee, in response to an express request by a State Party for assistance in its efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

Article 22

The States Parties to the present Protocol undertake to accord the Subcommittee all the powers granted to national mechanisms for the prevention of torture under the provisions of articles 5 and 6 if, within two years of ratification of the present Protocol, a national mechanism has not started to visit places of detention.

Article 23

1. A State Party to the present Protocol may at any time declare under this article that it agrees to receive a delegation of the Subcommittee to carry out, in accordance with the present Protocol, visits to any territory under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are or may be held.

2. The Subcommittee shall establish, by lot, a programme of visits to all States Parties making the declaration provided for in the preceding paragraph.

3. Such visits may be conducted jointly with the national mechanism.

4. Visits shall be conducted by at least two members of the Subcommittee. They may be accompanied by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol and shall be selected by consensus from a roster of experts prepared on the basis of proposals made by the States Parties that have made the declaration provided for in paragraph 1 of this article, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for Crime Prevention. In preparing the roster of experts, the States Parties concerned shall propose no more than five national experts.

5. The delegation making the visits and its members shall enjoy the same powers and duties conferred on the national mechanism under articles 5, 6 and 7, paragraphs 1 (a) and 2.

6. The provisions of this article shall enter into force when five States Parties to the present Protocol have made the declaration provided for in paragraph 1 of this article. Such declarations must be deposited by States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such declarations shall not become effective until six months after their notification.

Article 24 (former art. 18 [17])

1. The present Protocol shall be open for signature by any State that has signed the Convention.

2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 25 (former art. 19 [18])

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 26 (former art. 20 [18 bis])

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 27 (former art. 21 [19])

1. A State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol with regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Subcommittee prior to the date on which the denunciation becomes effective.

3. As of the date on which the denunciation of the State Party becomes effective, the Subcommittee shall not commence consideration of any new matter regarding that State.

Article 28 (former art. 22 [19 bis])

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that within four months from the date of such

communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 29 (former art. 23 [20], amended)

Members of national mechanisms and of the Subcommittee shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 30 (former art. 24, amended)

During a visit to a State Party and without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy, members of the Subcommittee shall:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 31 (former art. 25 [21])

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

D. PROPOSAL OF NEW AND REVISED ARTICLES TO BE INCLUDED IN THE ORIGINAL DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, SUBMITTED BY THE DELEGATION OF SWEDEN ON BEHALF OF THE EUROPEAN UNION AT THE NINTH SESSION OF THE WORKING GROUP IN 2001

PREAMBLE

The States Parties to the present Protocol,

Recalling the purposes and principles of the Charter of the United Nations, and the obligation of States under the Charter, in particular articles 55 and 56,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited,

Recalling articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which obliges each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Convinced that further measures are necessary to achieve the purpose of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the need to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment,

Convinced also that combating impunity constitutes an important element in the prevention of torture and recalling in this regard article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol),

Welcoming the positive impact an independent regional and national mechanism could have on the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Considering that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,

Bearing in mind also the principles of cooperation and confidentiality as basic principles of the present Protocol,

Article 1 (new)

For the purpose of this Protocol:

(a) Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority;

(b) A mission includes the travel and all the activities carried out by the Subcommittee in a State Party's territory;

(c) A visit means the inspection of a physical facility where persons are deprived of their liberty;

(d) The Subcommittee shall be deemed to be represented by its delegation.

Article 2 (old 2)*

1. A Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture shall be established which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Subcommittee); the Subcommittee shall be responsible for organizing missions and visits to the States Parties to the present Protocol for the purposes stated in article 3.

2. The establishment of the Subcommittee does not preclude the setting up as appropriate of a national mechanism to carry out unrestricted visits to places where persons are deprived of their liberty, as referred to in article 15.

Article 3 (old 1 revised)

1. The objective of this Protocol is to establish an international preventive visiting mechanism to examine the treatment of persons deprived of their liberty, with a view to recommending means for strengthening, if necessary, the protection of such persons from torture and other cruel, inhuman or degrading treatment or punishment.

2. Each State Party agrees to permit missions by the Subcommittee to its territory and visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty.

3. Objection to a visit may only be made on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited, which temporarily prevent the carrying out of such a visit. The existence of a state of emergency cannot as such be invoked by a State Party as a reason to object to a visit.

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* See E/CN.4/2002/58.

4. Following objections under paragraph 3, the State Party and the Subcommittee shall immediately enter into consultations in order to clarify the situation and seek agreement to enable the Subcommittee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Subcommittee proposed/wishes to visit. Until the visit takes place, the State Party shall provide information to the Subcommittee about the person concerned.

5. A State Party may at the time of its ratification or accession to this Protocol consult with the Subcommittee in order to assess its needs for technical cooperation.

6. A State Party may also upon ratification or accession submit a public declaration delaying visits by the Subcommittee to its territory or places where persons are deprived of their liberty under its jurisdiction and control, for a maximum of two years after the entry into force of the Optional Protocol for that State Party. The State Party, in consultation with the Subcommittee, shall review this declaration one year after the entry into force of the Optional Protocol for that State Party. Missions may take place immediately after the entry into force of the Optional Protocol for that State Party.

Article 4 (old 3)

1. In the application of this Protocol the Subcommittee and the national authorities of the State Party concerned shall cooperate with each other.

2. The Subcommittee shall conduct its work within the framework of the Charter of the United Nations and be guided by the purposes and principles thereof.

3. The Subcommittee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

Article 5 (old 4)

1. The Subcommittee shall consist of 10 members. After the fiftieth ratification or accession to the present Protocol, the number of members of the Subcommittee shall increase to 25.

2. The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Subcommittee may be nationals of the same State.

4. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee effectively.

Article 6 (old 5)

1. Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) Nominees of the Subcommittee shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) Not more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the written consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States Parties, which have nominated them.

Article 7 (old 6)

The members of the Subcommittee shall be elected in the following manner:

1. Elections of the members of the Subcommittee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. The initial election shall be held no later than six months after the date of entry into force of the present Protocol.

3. The States Parties shall elect the members of the Subcommittee by secret ballot.

4. In the election of the members of the Subcommittee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 5. Furthermore, due consideration shall be given to a proper balance among the various fields of competence referred to in article 5, to equitable geographical distribution of membership and to representation of the different forms of civilization and legal systems of the States Parties.

5. Consideration shall also be given to balanced representation of women and men on the basis of the principles of equality and non-discrimination.

6. If, during the election process, two nationals of a State Party have become eligible to serve as members of the Subcommittee, the membership of the Subcommittee shall be resolved in the following manner, in conformity with article 5, paragraph 3:

(a) The candidate receiving the higher number of votes shall serve as the member of the Subcommittee;

(b) Where the nationals have received the same number of votes, the following procedure applies:

(i) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee;

(ii) Where both nationals have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall be the member;

(iii) Where neither national has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which national shall be the member.

Article 8 (old 7)

If a member of the Subcommittee dies or resigns or for any other cause can no longer perform the member's Subcommittee duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9 (old 8 revised)

1. The Subcommittee:

(a) Shall establish on the basis of a transparent procedure, a programme of regular missions to all States Parties. These missions may also include follow-up missions;

(b) Shall also undertake such visits or missions as appear to be required in the circumstances and based on information received by the Subcommittee and assessed by it as credible, with a view to furthering the aims of this Protocol;

(c) Shall after a mission or a visit advise and assist the State Party in assessing the needs and appropriate measures for strengthening the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(d) May make recommendations to the State Party on the mandate, the competence and the effective functioning as well as other relevant activities of an established national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with article 15;

(e) Shall transmit requests from a State Party for technical assistance and technical cooperation as well as facilitate the provision of such cooperation from the relevant United Nations bodies such as UNHCHR, UNDP, ODCCP, UNICEF and UNIFEM.

2. The Subcommittee shall send a written notification to the Government of the State Party concerned of its intention to organize a mission.

3. Before a mission is carried out, the Subcommittee and the State Party concerned shall, if either of them so request, enter into consultations with a view to agreeing without delay on the practical arrangements for the mission. Such consultations on the practical arrangements for the mission may not include negotiations on the obligations of a State Party under articles 3 or 13.

Article 10 (old 9)

The members of the Subcommittee shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1.

Article 11 (old 10)

1. The Subcommittee shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Subcommittee shall be made by a majority vote of the members present;

(c) The Subcommittee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee. After its initial meeting, the Subcommittee shall meet at such times as shall be provided in its rules of procedure.

Article 12 (old 11)

1. The Subcommittee may decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention. The dates of the rescheduled mission shall be determined taking into account the provisions of articles 3 and 9.

2. The Subcommittee, while respecting the principles set out in article 4, is encouraged to cooperate for the prevention of torture in general with the relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3. If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Subcommittee shall still be responsible for missions to such a State Party under this Protocol, assuring its universal application. However, the Subcommittee and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to the efficient promotion of the objectives of this Protocol, including on the matter of duplication of work. Such cooperation may not exempt the States Parties belonging also to such conventions from cooperating fully with the Subcommittee.

4. The provisions of the present Protocol do not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, or the possibility for any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 13 (old 12 revised)

1. The Subcommittee and the State Party shall cooperate with a view to the effective fulfilment of the mission. In particular, the State Party shall provide the Subcommittee with:

(a) Unrestricted access to all information, deemed relevant by the Subcommittee, concerning the number of persons deprived of their liberty, in accordance with article 16 of the Convention, as well as the number of places and their location;

(b) Unrestricted access to all information, deemed relevant by the Subcommittee, concerning the treatment and the conditions of detention;

(c) Access to and freedom of movement within any territory under its jurisdiction and control for the conduct of the mission;

(d) All information deemed relevant by the Subcommittee to the effective conduct of the mission, including in particular on any person or places referred to in article 3 of the Protocol;

(e) Access to and within any place referred to in article 3 of the Protocol;

(f) Access to persons referred to in article 3 of the Protocol, and the opportunity for private interviews with them;

(g) The opportunity to communicate freely with any person whom they believe can supply relevant information.

2. With regard to a particular visit, the obligations referred to under paragraph 1 shall be implemented in a manner consistent with national law and professional ethics complimentary to international human rights standards.

Article 14 (old 14)*

1. After each mission or visit, the Subcommittee shall draw up a report on the mission or the visit and any recommendations it considers necessary, which shall be submitted to the State Party concerned. The Subcommittee shall finalize its report after fair consideration is given to comments submitted, within a reasonable time, by the State Party concerned. If a State Party so wishes its comments shall form an annex to the report.

2. The Subcommittee shall transmit to the State Party its report containing any recommendations it considers necessary to improve the protection of persons deprived of their liberty. To this effect, the Subcommittee and the State Party may consult on the implementation of the recommendations, including ways and means in which the State Party can be assisted, as well as the submission of a request for technical cooperation as referred to in article 9, paragraph 1 (e).

3. The information gathered by the Subcommittee in relation to a visit, its report and its consultations with the State Party shall be confidential. Members of the Subcommittee and other persons assisting the Subcommittee are required, during their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions.

4. At the request of the State Party concerned, the Subcommittee shall publish its report on a visit. By agreement between the Subcommittee and the State Party, the report on a visit may be published or made public in part. If the State Party decides to make part of the report on a visit public, the Subcommittee may make a public statement or publish the report in whole or in part in order to ensure a balanced presentation of the contents of the report.

5. If a State Party fails to cooperate or refuses to improve the situation in the light of the Subcommittee's recommendations, the Committee against Torture may at the request of the Subcommittee decide by majority of its members, after the State Party has had an opportunity to make known its views, to make a public statement on the matter or to publish the report.

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* See E/CN.4/1996/28.

6. No personal data shall be published without the expressed consent of the person concerned.

7. Subject to the rule of confidentiality under paragraph 3, the Subcommittee shall every year submit an annual report to the Committee against Torture on its activities, which shall be public.

Article 15 (new)

For the purposes of this Protocol, a State Party wishing to establish a national mechanism undertakes to ensure that:

(a) The national mechanism will be composed of independent experts fulfilling the requirements set out in articles 4, paragraph 3, and 5, paragraph 2;

(b) It has full powers to issue recommendations to the concerned authorities;

(c) It has unrestricted access to all places where persons are deprived of their liberty under all situations, including in peacetime, times of public disorder or states of emergency and during war in accordance with international humanitarian law;

(d) Unrestricted access to persons deprived of their liberty;

(e) Full freedom to interview the persons deprived of liberty without witnesses, with the assistance of interpreters, if required, as well as all relevant personnel or persons;

(f) Unrestricted liberty to contact, inform and meet with the Subcommittee with a view to implementing article 9, paragraph 1 (d);

(g) The reports on its visits shall be public.

Article 16 (old 15)

Each State Party shall disseminate information about the present Protocol, the tasks of the Subcommittee and the facilities to be provided to the Subcommittee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to in article 3.

Article 17 (old 16)

1. The expenditure incurred by the Subcommittee in the implementation of the present Protocol, including missions and visits, shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the present Protocol.

Article 18 (old 17)

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee to a State Party expressing the need for additional assistance for its ongoing efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions.

Article 19 (old 18)

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention.

3. Instruments of ratification or instrument of accession, together with a public declaration pursuant to article 3, paragraph 6, shall be deposited with the Secretary-General of the United Nations.

4. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

5. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

6. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession and public declaration submitted pursuant to article 3, paragraph 6.

Article 19 bis (new)

No reservations shall be made to the present Protocol.

Article 20 (old 19)

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 21 (old 20)

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 22 (old 21)

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Subcommittee has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Subcommittee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Subcommittee shall not commence consideration of any new matter regarding that State.

Article 23 (old 22)

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional process.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 24 (old 23)

Members of the Subcommittee and of missions authorized under the present Protocol shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 25 (old 24)

In the conduct of missions, all members shall without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 26 (old 25)

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

E. ALTERNATIVE DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, SUBMITTED BY THE DELEGATION OF THE UNITED STATES OF AMERICA AT THE TENTH SESSION OF THE WORKING GROUP IN 2002

PREAMBLE

The States Parties to the present Optional Protocol,

Recalling the purposes and principles of the Charter of the United Nations and the obligations of States under the Charter,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) requires a combination of legislative, administrative, judicial and other measures,

Recognizing that strengthening the protection of and full respect for human rights is a common responsibility shared by all and that international mechanisms are complementary to national measures,

Recognizing the important contribution that regional mechanisms may make to the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, particularly by non-judicial means of a preventive character based on visits,

Desiring to undertake an international commitment to make the prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Convention more effective,

Bearing in mind the principles of cooperation and confidentiality as basic principles of the present Protocol,

Have agreed as follows,

PART I

Article 1

1. (a) There shall be established, under the Committee against Torture (hereinafter referred to as the Committee), a Subcommittee on the Prevention of Torture (hereinafter referred to as the Subcommittee on Prevention) which shall carry out the functions hereinafter provided.

(b) The Subcommittee shall consist of [five] experts of recognized competence in the field of human rights, who shall serve in their personal capacity and shall, under its direction, carry out the functions herein provided.

2. Each State Party may, in furtherance of articles 2 and 16 of the Convention, establish, maintain or provide for national mechanisms to strengthen, if necessary, the protection of persons deprived of their liberty pursuant to an order of a public authority from torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as national mechanisms).

Article 2

The Subcommittee on Prevention, under the direction of the Committee, shall:

(a) Assist members of the Committee with respect to the Committee's functions under the Convention, including, in particular, the making of confidential inquiries in accordance with paragraphs 1-5 of article 20, as well as with voluntary visits the Committee may propose to State Parties that may be made in agreement with them;

(b) Assist, upon request, States Parties in setting up national mechanisms;

(c) Respond to requests for technical advice designed to assist States Parties with the operation of national mechanisms, as well as with the effective implementation of their obligations under articles 2 and 16 of the Convention;

(d) Serve as a resource for technical information and advice to promote safe, humane, cost-efficient and appropriately secure facilities for detention or imprisonment.

Article 3

National mechanisms may, inter alia:

(a) Examine the situation of persons deprived of their liberty pursuant to an order of a public authority with a view to strengthening, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment;

(b) Make recommendations to the competent authorities with a view to improving the treatment and conditions of such persons and preventing torture and other cruel, inhuman or degrading treatment or punishment;

(c) Propose or comment on draft or existing legislation on matters relating to the treatment of such persons;

(d) Request, where necessary, technical advice from the Subcommittee on Prevention designed to assist States Parties with the effective implementation of their obligations under the Convention with a view to strengthening, if necessary, the protection of such persons from torture and other cruel, inhuman or degrading treatment or punishment.

Article 4

1. The Subcommittee on Prevention shall submit an annual report of its activities to the Committee which shall be made available to States Parties. National mechanisms which may be established, maintained or provided for in accordance with the Protocol shall be provided with such reports.

2. States Parties shall permit direct contact between such national mechanisms and the Subcommittee on Prevention.

PART II

Article 5

The members of the Subcommittee on Prevention shall be elected in the same manner as members of the Committee referred to in paragraphs 2 to 6 of article 17, consideration being given to equitable geographical distribution and to the usefulness of the participation of persons having professional experience in the field of the administration of justice, criminal law, prison or police administration, or in the various medical fields relevant to the treatment of persons deprived of their liberty.

Article 6

The Committee shall establish rules of procedure for the Subcommittee on Prevention, but these rules shall provide, inter alia, that:

(a) [Four] members shall constitute a quorum, and;

(b) Decisions of the Subcommittee shall be made by a majority of the members present.

Article 7

The Committee shall convene the initial meeting of the Subcommittee. After its initial meeting, the Subcommittee shall meet at such times as shall be provided in its rules of procedure.

Article 8

Members of the Subcommittee on Prevention shall be entitled to the facilities, privileges and immunities provided to members of the Committee under article 23 of the Convention.

PART III

Article 9

1. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under this Protocol.

2. The States Parties which shall have accepted this Protocol shall be responsible for expenses incurred in connection with the operation of the Subcommittee on Prevention, in a manner based upon the United Nations scale of assessment prorated to take into account the number of States Parties to the Protocol.

Article 10

1. The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention based on a system of visits to places of detention. The Subcommittee on Prevention and the bodies established on the basis of such regional mechanisms shall consult and cooperate in order to promote effectively the objectives of the present Protocol and avoid any duplication of work.

2. The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 11

1. The present Protocol shall be open for signature by any State that has signed the Convention.

2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 12

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 13

A State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article 14

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 15

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.